THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 18401 of 2005

Date: 14.09.2005

Between:

Adepu Babu, s/o. A.Rajaiah,

R/o. Quarter no.D/1870, Rameshnagar,

Godavarikhani, Karimnagar district-505209

& 4 others

…Petitioner

and

State Bank of India, Jaipur branch,

Jaipur mandal, Adilabad district,

Rep. by its Branch Manager

…Respondent

ORDER:

Challenging the inaction of the respondent bank on the acceptance letter dated 10.09.2003 of the petitioners on the offer letter dated

18.03.2003 issued by the respondent bank under R.B.I. mandated O.T.S.-2003, the present Writ Petition is filed.

The brief facts that are necessary for disposal of this Writ Petition are as follows:

First petitioner is the proprietor of borrowing unit M/s. Godavari Poultries; petitioners 2 to 4, who are mortgagors of the immovable properties offered as collateral security, are father and brothers respectively of the first petitioner; that the first respondent started small poultry unit as self-employed venture in the name and style 'Godavari Poultries' in the year 1996; that the respondent-bank granted term loan of Rs. 13.95 lakhs on 08.03.1996; it also granted non-fund bank guarantee for one year to M/s. Sri Rama Poultry Feeds on behalf of the petitioner-unit in 1996 and renewed for another year during 1997; since the beneficiary of the bank guarantee prematurely invoked the bank guarantee and claimed the amount, the respondent bank debited Rs. 2,00,000/- from the current account of petitioners; that the respondent bank did not revive the full scale of unit's operations; on 18.03.2003, the respondent bank sent a letter to accept its offer of full and final settlement of amounts due for Rs.17,84,911/- under RBI mandated One Time Settlement scheme of Bank Dues, 2003, for which the petitioners gave acceptance on 10.09.2003; but, the respondent-bank did not grant compromise settlement of accounts under the said scheme, instead proceeded legally and the petitioners and others received demand notice dated 29.04.2004 and order of attachment of immovable property in form no.16 and notice for settling sale proclamation of the property in form no.17 from the Debts Recovery Tribunal, Hyderabad; the efforts made by petitioners by renewing their request for O.T.S., 2003, vide letter 22.06.2005, remained futile; on 04.07.2005, the respondent bank caused proclamation of sale of immovable property; hence, the Writ Petition.

The respondent-bank filed its counter affidavit denying the allegations and contending that if the petitioners are so aggrieved, they ought to have filed appeal under Section 35 of the Recovery of Debts due to Banks and Financial Institutions Act, 1995; since the petitioners failed to repay the amounts due, the respondent bank has no other option except to recall the advances by filing application before the Debt Recovery Tribunal; the petitioners did not pay the debts inspite of decree dated 20.12.2004 passed by the Tribunal for Rs.43,95,040/-. It is further submitted that the petitioners did not give their unequivocal acceptance to the said OTS offer, but vide their letter dated 10.09.2003, made a counter offer, offering some amount to the outstanding amount; the request of the petitioners was not in conformity with the RBI guidelines; the petitioners could not avail the OTS scheme by complying with its terms and conditions; hence, the Writ Petition is liable to be dismissed.

Learned counsel for the petitioners contended that the petitioners applied for O.T.S. scheme on 10.09.2003 and without passing any orders thereon, the respondent obtained a decree from the Debt Recovery Tribunal; that the petitioners are ready to pay 1/4th of the outstanding amount as stipulated under the O.T.S. scheme, which is extended by further guidelines issued by the Reserve Bank of India and the application of the petitioners is within the time prescribed.

The learned Standing Counsel appearing on behalf of the respondents contended that in the first instance the petitioner applied for the O.T.S. scheme after lapse of time and that even the said application dated 10.09.2003 can not be said to be an offer made by the petitioners as per the terms and conditions of the scheme; that after the auction was over, the present petition is filed challenging the auction; hence, he prays to dismiss the Writ Petition.

Initially, the respondent-bank issued a notice dated 18.03.2003 directing the petitioners to apply for repayment of the debts under the O.T.S. scheme. As per the notice, the petitioners' application should reach the bank before 30.04.2003 and that, single payment should be made, however, if 1/4th of the determined amount is paid, the balance amount with simple interest can be made in instalments in a year. Admittedly, the petitioner did not comply with the conditions of the said notice dated 18.03.2003. Reserve Bank of India issued certain guidelines extending the date for receipt of applications under the O.T.S. scheme from 30.04.2003 to 30.09.2003. One of the conditions prescribed by the Reserve Bank of India is that the banks should follow the guidelines for compromise settlement of all NPAs covered under the revised scheme without discrimination. The first petitioner gave a representation on 10.09.2003 stating that he has decided to pay Rs.10,00,000/- by 31.12.2003 by selling poultry farm and therefore, he requested the bank authorities to accord permission to sell the farm. This letter dated 10.09.2003 did not indicate as to the single amount payable towards the outstanding loan of Rs. 17,84,911/-, but stated that he was prepared to pay Rs.10,00,000/- before 31.12.2003 and the remaining loan will be paid during the year 2004-2005 along with interest. No action has been taken by the respondents in pursuance of the letter dated 10.09.2003. After the sale notice was issued, the present Writ Petition is filed. If the contents of the letter dated 10.09.2003 can be accepted as true, nothing prevented the petitioners to pay Rs.10,00,000/- by 31.12.2003. The petitioners did not raise their little finger till the auction notice is given. Even the guidelines issued by the Reserve Bank of India are only advice to the Banks. It is not known whether the bank accepted the receipt of applications under O.T.S. scheme. Even if the bank has not passed any orders, it is for the petitioners to show their bonafides by paying the amount. The petitioners did not pay any amount till the auction is over. Now, the auction is over and third party's interest are involved. At this stage, it is not desirable to interdict the auction in view of the fact that no statutory right of the petitioner has been infringed.

The Writ Petition is devoid of merits and is dismissed. No costs.

(K.C.Bhanu, J.)

14.09.2005

DRK